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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

SARAH SMITH,

Defendant and Appellant.

D060091

(Super. Ct. No. SCD220275)

APPEAL from a judgment of the Superior Court of San Diego County, Richard S. Whitney, Judge. Affirmed.

The prosecution, alleging that defendant Sarah Smith knowingly participated in a scheme in which she and her boyfriend Roger Rodriguez rented residential property they did not own to two unsuspecting tenants, charged her with five counts of grand theft (Pen. Code, § 487, subd. (a), counts 1 through 5) and one count of attempted grand theft (Pen. Code, §§ 664/487, subd. (a), count 6). Because Smith was apprehended driving a stolen car, the information also charged her with unlawfully driving or taking a vehicle. (Veh. Code, § 10851, subd. (a), count 7.)

The only disputed issue at trial was whether Smith was a knowing participant in Rodriguez's scheme. The overarching theme of her defense was that she had been taken advantage of by her live-in boyfriend: she did not know Rodriguez did not have authority to rent the properties and did not know the vehicle she had driven for a year was stolen. The jury rejected that defense and convicted Smith on all counts. The court sentenced Smith to formal probation, with 260 days of local custody and credit for 144 days.

On appeal, Smith asserts it was error to permit the prosecution to introduce evidence of uncharged misconduct. She also argues the evidence is insufficient to support the verdicts.

I

THE FACTS

In April 2009, Ms. Bullard, an investigator with the San Diego County District Attorney's Office, was asked by the San Diego County Recorder's Office to investigate a series of suspicious grant deeds recorded in the Recorder's Office. The deeds aroused suspicion because all of the deeds were "gifts," the grantees were a group of overlapping individuals (including "Tim Smith"), and the deeds were all mailed to the same address in Pomona, California, after recording.

A. The Horton Property Thefts (Counts 1 Through 6)

One of the recorded deeds involved a duplex on Horton Drive in La Mesa, California (the Horton Property), owned by Dellanira Monroy. The deed, which contained a signature resembling the signature of Monroy, purported to convey the duplex to the group of grantees. However, the signature was a forgery. Monroy had not

signed the deed, had never heard of any of the named grantees, and was unaware of the deed until she received a copy of it from Bullard.

Bullard tried to locate the named grantees but was unable to find any records for them; she believed the names were fictitious and the individual grantees did not exist. Bullard went to inspect the Horton Property and found one of the units was then being rented and occupied by Mr. Rock, and the other unit was rented and occupied by Mr. Black. They both told Bullard they paid their monthly rent to Tim Smith. Monroy did not authorize either of those rentals.¹

Bullard interviewed Rock and Black, who both stated they were making their rental payments to Tim Smith and Smith. Rock and Black related similar stories of how they came to rent the units. Both had found the units on a "Craig's List" advertisement listing the contact person as Tim Smith. They made arrangements to view the respective units and were met at the unit by Smith's boyfriend, Rodriguez, who identified himself as Tim Smith to Rock and Black. Rock and Black filled out rental applications for their respective units, and agreed to pay \$1100 per month for that unit. They each also paid an additional \$1100 as a security deposit.

When Rock first paid Rodriguez (for the first month's rent and the security and pet deposit), Rodriguez instructed Rock to make the check payable to Smith. When Rock paid rent in February 2009, he mistakenly made a check out payable to "Tim Smith" and left it for Rodriguez under the doormat. A day or two later, Rodriguez called Rock and

¹ To the contrary, Monroy had instructed her property manager to have the previous tenants move out because she had placed the Horton Property up for a "short sale" in December 2009.

told him the checks should be made payable to his (Rodriguez's) wife, Sarah Smith. Rodriguez told Rock that she and Rock had the same bank (Washington Mutual) so it would be easier to cash the checks, and made arrangements with Rock to go to a Washington Mutual branch in La Mesa, California. When Rodriguez arrived at the property, he was driving a silver Mercedes with paper license plates and was accompanied by Smith. Rodriguez and Rock drove separately to the bank and, when they arrived, Rodriguez introduced Smith as "my wife, Sarah." Rock retrieved the original check and replaced it with a cashier's check payable to Smith. For the next several succeeding months, Rock paid the rent with checks made payable to Smith.

Black explained that he paid his \$1100 rent each month in cash for the first four months of 2009. When Rodriguez came to collect the rent, he would drive cars with paper tags rather than license plates, including a Nissan Armada. On some of these occasions, Smith and two children were in the car with Rodriguez.

B. The Sting

Bullard enlisted the help of Black to apprehend Smith and Rodriguez. Using a ruse developed by Bullard, Black was to call Tim Smith and tell him Black was going to be out of town on the date the rent was due and wanted to make the payment early, and to arrange for them to pick it up at the Horton Property. Bullard's plan was to wait at the property for Rodriguez or Smith to show up for the check. When Rodriguez returned Black's call, Rodriguez said he was in Los Angeles but would send his wife Sarah to pick up the rent money.

About 20 to 30 minutes later, Smith arrived at Black's unit.² Bullard answered the door and, after Smith identified herself and said she was there to collect Black's rent, Bullard placed her under arrest. On the ride to the police station, she revealed she had been sent by her boyfriend, Rodriguez, to collect the rent. Bullard asked her who Tim Smith was, and Smith replied he was an investor. She also told Bullard that she and Rodriguez lived together at a home on Lomo Del Sur; they had moved there from an address on Anaheim Drive after Rodriguez had received threats concerning fraud.

Bullard interviewed Smith at the station after she received and waived her *Miranda*³ rights. Smith stated she and Rodriguez had lived together for 11 years. Rodriguez told her he obtained the property with another investor from Los Angeles, and she went to pick up Black's rent payment because Rodriguez asked her to do so. Rodriguez told her he made money investing in houses, but because he lost his real estate license 14 years earlier, he asked her to obtain a real estate license in her own name that he could use for his deals, and Smith complied. She denied knowing he was engaged in

² The facts underlying count 7 were based on the car Smith drove to Black's unit. The car Smith was driving--a silver Nissan Armada bearing paper plates that said "Antelope Valley Nissan"--had been reported stolen. Smith had the keys to the car, and license plates for the car were found in the glove compartment. The car had originally been purchased on credit from a dealership by someone using the name "Kenneth Meade," but who in fact had used a false California Identification Card and a false Social Security number, and had used the same address (for purposes of registering the car) as had been used in connection with the forged grant deeds for the Horton Property and other properties. There had been no payments made on the car loan in the two years prior to Smith's arrest.

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

any fraudulent activity or that rent was being deposited into her bank account. Regarding the car she was driving, she claimed Rodriguez bought the car and gave it to her about a year earlier. She kept asking about getting the car registered, and he told her she needed about \$2000 to get it registered. He gave his mother a Mercedes and he was driving a "Hummer," and he assured her he had taken over the payments on the Armada but getting it re-registered would require them formally to assume the loan payments, and her credit was bad. She conceded the story "never really made sense to me."

C. The Evidence from the Searches

Smith's Purse

Police searched Smith's purse when she was arrested. They found a 2008/2009 two-year planner with writing on the front cover that named "Bertha Garcia" and a Social Security number beneath it, and underneath that were the words "water, electric, Bertha," and below that it said "cable, trash, Sarah." Police later determined the Social Security number did not match "Bertha Garcia," which was a fictitious identity.

The Horton Property

Police also searched the home Smith shared with Rodriguez and her two children. Regarding the Horton Property, police found a packet of documents on a desk that included a "retran" printout (an online listing of properties in foreclosure prepared for realtors) containing the Horton Property address. Also included in the packet was the original grant deed from 2002; a Notice of Trustee's sale; a residential listing agreement listing Smith as the broker (and listing the contact number as Smith's cell phone) and Rodriguez as the property manager; a due diligence document; a rental application; a

grant deed to "Mojisholo Ojo"; an unsigned grant deed with a notary stamp and notary signature already on it⁴; and a notice sent to a foreclosure department from one of the purported grantees of the Horton Property. The packet also included Rock's rental application.

Police also searched a computer used by Smith and found documents relating to the Horton Property. Under a desktop folder labeled "Grants," which Smith used to generate and store some of her college course work, police found a blank grant deed for the Horton Property, bankruptcy documents for a bankruptcy filing by "Charles McKnown," a fax cover sheet sending the McKnown information to the trustee's sale department, a notice of sale by the trustee, and a deed of trust relating to Monroy's ownership of the Horton Property. Also found in this folder was a document entitled "Professional Management Tim Smith Realty Rental Application."

*The Uncharged Misconduct*⁵

Ms. Munoz, a longtime friend of Smith who also spent a period living with and working for Smith as a live-in nanny, warned Smith that Rodriguez was using Smith's

⁴ A realtor with 20 years of experience in the industry testified that a realtor's involvement with a grant deed ordinarily is through a title company or an escrow company. He also testified realtors normally would not have bankruptcy documents in their files.

⁵ Smith argued below, and contends on appeal, that this evidence should have been excluded under Evidence Code sections 1101 and 352. The People argued below, and contend on appeal, the evidence was admissible to show intent, knowledge, common plan, and lack of accident or mistake. We briefly summarize the "other misconduct" evidence.

real estate license for illegal activities. Smith appeared unnerved and upset by Munoz's statement. Munoz also testified that, after Rodriguez helped Munoz's friend (Mr. Delgado) get a real estate loan, Delgado complained to Munoz that Rodriguez had misused Delgado's identity to acquire a Mercedes Benz vehicle.⁶ Munoz told Smith about what Rodriguez did to acquire the Mercedes.

Police also found documents for numerous other properties in which forged grant deeds were used to obtain nominal title. For a property on Vista Grande Avenue, Bullard found a forged grant deed, a "retran," a rental application, and a property management agreement. The management agreement listed Charles McKnown and Tim Smith as owners, Smith and Rodriguez as brokers, and listed Smith (along with her cell phone number) as "contact" broker. Bullard went to the Vista Grande Avenue property and spoke to the tenants at the property, who gave a copy of their rental agreement to Bullard. Smith's name and phone number were listed for the "agent," and when Bullard dialed the number, the line was answered by Smith's voice on a voicemail recorded message.

Bullard also found similar paperwork for four other properties,⁷ including forged grant deeds to Charles McKnown and Tim Smith,⁸ retrans concerning some of those

⁶ Documents relating to this Mercedes were among the documents seized by police when they searched Smith's home.

⁷ One of the properties was on Blackthorn Avenue. On the same computer containing Smith's college course work, police found a file labeled "Blackthornbk.pdf." That file contained a notice of trustee's sale for the Blackthorn property, a copy of the forged trust deed, and bankruptcy documents using the name Charles McKnown. The Blackthorn property was one of the properties listed on a printout of another "retran" found in Smith's home that contained Smith's apparent handwriting.

properties, paperwork related to foreclosures on the properties and bankruptcy notices, and property management agreements listing Smith and Rodriguez as property managers and Smith as the agent. Police also found a plain sheet of paper containing various handwritten signatures that appeared to show someone had been practicing forging signatures.⁹

There was evidence Smith and Rodriguez also used false identities to rent the house they were occupying. The listing agent for the house, Mr. Cady, testified he was contacted by a "Joseph Walker" to rent the property, and the lease agreement for the property indicated Joseph Walker would lease the property and occupy it with Jaden Walker and Parris Walker.¹⁰ In the eight or nine months that monthly rental payments of \$2750 per month were paid on the "Walker" lease, Smith personally delivered each payment to Cady in cash. She told Cady they enjoyed living at the house and hoped some day to buy it. During the time Smith and Rodriguez lived at the house, they gave

⁸ On Smith's computer, police found an e-mail sent from Smith's mailbox to R&R Deals, a business owned by Rodriguez, which attached a grant deed to a property with the named grantees being Charles McKnown, Tim Smith and "Stefania Martin."

⁹ One of the signatures was Keiuntia Dixon, whose name later appeared as a notary on some of the forged grant deeds. The other practice signatures appeared on other forged grant deeds Bullard investigated. There was evidence the practicing of signatures was used in connection with the forged grant deed for the Horton Property because Monroy, the owner of the Horton Property, testified the forged signature used on the recorded grant deed for her property looked like her signature "but [is] not my signature."

¹⁰ Parris is the first name of Smith's daughter.

Cady three different purchase offers (listing three different buyers)¹¹ and each offer listed Smith as the buyers' real estate agent.

II

THE CLAIM OF EVIDENTIARY ERROR

Smith asserts the "uncharged misconduct" evidence described above should have been excluded under Evidence Code¹² section 1101, subdivision (a), as improper character evidence, and that it was an abuse of discretion to admit the evidence under section 1101, section (b), on the issue of whether she knew Rodriguez had forged the Horton Property documents to improperly collect rentals from the tenants.¹³ She asserts

¹¹ The first offer was from Joseph Walker, the second offer was from "Margarito Perez," and the final offer was from "Michael Pineda." None of the offers resulted in a sale.

¹² All further statutory references are to the Evidence Code unless otherwise specified.

¹³ Smith also seems to argue the court erred when it admitted evidence of a "custodial account," on which Smith was the custodian, into which \$185,000 was deposited in October 2007. Smith argues this evidence was irrelevant because there was no evidence those funds were obtained fraudulently. Smith cites nothing to suggest she timely raised this specific objection to the relevant aspects of those records, which waives any objection. However, even assuming Smith had preserved this claim, it appears this evidence had an independent purpose: to undermine Smith's explanation when she was arrested both as to what funds they were using to live on, and to attack the believability of her claim as to why she was driving the unregistered, stolen Armada. The defense claimed Smith innocently drove the car for over a year, even though it had not been registered and had no license plates, because she accepted Rodriguez's explanation for not transferring the car, e.g. that she would have to "come up with" \$2000 to register it. The bank records showed, however, that around the time the car was acquired, Smith was transferring large sums out of the custodial account, including an \$80,000 transfer into Rodriguez's account in January 2008 and, as of the beginning of May 2008, Rodriguez's account had over \$50,000 in it, undermining her claim that penury (rather than her

the documents regarding other properties would be relevant to showing her guilty knowledge of Rodriguez's scheme as to the Horton Property only if it was shown (1) Smith actually saw the fraudulent documents for the other properties; and (2) understood the significance of these documents.¹⁴ She also claims the evidence should have been excluded under section 352.

A. Legal Principles

The general rule under section 1101, subdivision (a), is that "evidence the defendant has committed crimes other than those for which he is on trial is inadmissible to prove bad character, predisposition to criminality, or the defendant's conduct on a specific occasion." (*People v. Williams* (2009) 170 Cal.App.4th 587, 607.) Under section 1101, subdivision (b), however, evidence that a defendant committed a crime or other "bad act" is admissible "when relevant to prove some fact (such as . . . intent, . . .

knowledge it was stolen) was why she decided not to register the car. Additionally, she apparently claimed they were living off the \$185,000 at the time she was arrested, but the bank records showed that money had been disbursed months before she was arrested, which provided some basis for the jury to infer Smith knew her current stream of income came from other sources.

¹⁴ Smith also asserts on appeal that an additional foundational showing was required, i.e. that the documents admitted at trial were related to Rodriguez's fraudulent scheme rather than to Rodriguez's "legitimate" business deals. However, Smith cites nothing in the record suggesting she objected, as to any of the documents admitted at trial, that admission of the documents was improper absent a foundational showing that the documents were related to Rodriguez's fraudulent scheme rather than to a legitimate business deal. Accordingly, Smith may not raise that claim on appeal. (See, e.g., *People v. Modell* (1956) 143 Cal.App.2d 724, 731 [objection to lack of foundation "must be specific and it must point out the alleged defect" and failure to identify defect waives objection on appeal].)

knowledge . . . [or] absence of mistake or accident . . .) other than his or her disposition to commit such an act."

The degree of similarity required between the uncharged act and the charged offense varies, depending on what the uncharged act is used to prove. Here, the prosecution offered the bad acts to prove knowledge and absence of mistake. This use requires the least degree of similarity because, as in the case in which intent is the fact to be proved, the evidence of the uncharged crime is admissible to prove the state of mind accompanying the act; that defendant committed the act itself is conceded or assumed.¹⁵ (See generally *People v. Foster* (2010) 50 Cal.4th 1301, 1328.)

Because Smith asserts the documents regarding other properties would be relevant to showing her guilty knowledge only if certain preliminary facts (e.g. she was *aware* of the documents and *understood* their significance) were first established, the principles under section 403 are also implicated here. "When the relevance of proffered evidence depends on the existence of a preliminary fact, the proponent of the evidence has the burden of producing evidence as to the existence of that preliminary fact. (. . . § 403,

¹⁵ As the court explained in *People v. Ewoldt* (1994) 7 Cal.4th 380, 402: "The least degree of similarity (between the uncharged act and the charged offense) is required . . . to prove intent. [Citation.] '[T]he recurrence of a similar result . . . tends (increasingly with each instance) to negative accident or inadvertence or self-defense or good faith or other innocent mental state, and tends to establish (provisionally, at least, though not certainly) the presence of the normal, i.e., criminal, intent accompanying such an act. . . .' [Citation.] . . . [T]o be admissible to prove intent, the uncharged misconduct must be sufficiently similar to support the inference that the defendant 'probably harbor[ed] the same intent in each instance.' [Citations.]" A greater degree of similarity is required to prove the existence of a common design or plan and the greatest degree of similarity is required to prove intent. (*Id.* at pp. 402-403.)

subd. (a)(1).) The proffered evidence is inadmissible unless the trial court finds sufficient evidence to sustain a finding of the existence of the preliminary fact. (*Ibid.*; see also *People v. Marshall* (1996) 13 Cal.4th 799, 832 . . . ['the trial court must determine whether the evidence is sufficient to permit the jury to find the preliminary fact true by a preponderance of the evidence'].) 'The decision whether the foundational evidence is sufficiently substantial is a matter within the court's discretion.' " (*People v. Bacon* (2010) 50 Cal.4th 1082, 1102-1103.) A trial court's decision as to whether the foundational evidence is sufficient to make the proffered evidence relevant is reviewed for abuse of discretion. (*Ibid.*)

B. Analysis

Section 1101

In this case, there was ample evidence (and Smith does not dispute on appeal) that she committed the acts charged in the information (e.g. taking or attempting to take the funds charged in counts 1 through 6 and driving the stolen vehicle charged in count 7), and the only issue was her knowledge and intent at the time she acted. Under these circumstances, the evidence of prior misconduct was not admissible to prove Smith's criminal disposition, but was admissible to show her knowledge or the absence of mistake (§ 1101, subd. (b)), the precise basis of Smith's defense below. As the court stated in *People v. Miller* (2000) 81 Cal.App.4th 1427, " '[A]s with other types of circumstantial evidence, . . . admissibility [of other crimes evidence] depends upon three principal factors: (1) the *materiality* of the fact sought to be proved or disproved; (2) the *tendency* of the uncharged crime to prove or disprove the material fact; and (3) the

existence of any *rule* or *policy* requiring the exclusion of relevant evidence." [Citation.]' [Citation.] [¶] In the instant case, whether defendants harbored the requisite intent to defraud . . . was a disputed material issue. Other crimes evidence is admissible ' "*where the proof of defendant's intent is ambiguous, as when he admits the acts and denies the necessary intent because of mistake or accident.*" ' " (*Id.* at pp. 1447-1448, fifth italics added.)

Smith does not dispute the materiality of the facts sought to be proved or disproved by the evidence. Instead, she argues the other misconduct evidence would have no relevance or "tendency in reason" to prove her knowledge or absence of mistake unless the preliminary facts were shown. We conclude the trial court's determination--that there was sufficient evidence from which the jury could have found the preliminary facts true by a preponderance of the evidence (*People v. Marshall, supra*, 13 Cal.4th at p. 832)--was not an abuse of discretion.

There was evidence from which a jury could have found by a preponderance of the evidence that she was *aware* of the documents. All were found in her home, apparently in plain view,¹⁶ providing her ample opportunity to have seen them. Indeed, some of the documents were found in a folder on a computer she indisputably personally used for her schoolwork. Because there was sufficient evidence from which a jury *could* have found this preliminary fact to be true, the trial court correctly admitted the evidence and left to

¹⁶ Although the precise location each document found inside her home and introduced at trial was not specified, there were some documents found on a kitchen table and other documents found in plain view on a desk, and Smith cites nothing on appeal suggesting *any* of the challenged documents were secreted in the home.

the jury the ultimate decision of whether or not the preliminary fact was true. (Cf. *People v. Lucas* (1995) 12 Cal.4th 415, 466-467.)

We also conclude there was sufficient evidence from which a jury could have found by a preponderance of the evidence that the second preliminary fact raised by Smith was true: whether she *understood* the significance of the documents in her home on which false identities were used for various purposes. First, the evidence showed Smith passed her real estate agent's license exam, suggesting she was schooled in (rather than ignorant of) the significance of such things as a "retran," a grant deed, and a notary stamp on an unsigned deed. Second, there was paperwork showing someone was practicing falsifying signatures, including a falsified signature for a notary, from which a jury could have found Smith understood what was actually occurring regarding the use of false identities and forgeries. Third, there was evidence from which a jury could have inferred Smith understood how to manipulate false identities: a notebook found in her purse showed she was carrying around identifying information for a fictitious identity (Bertha Garcia), which in turn had been used to obtain water and electric services. Fourth, there was evidence Smith had been warned that Rodriguez misappropriated another person's identity to obtain property (an automobile) for himself. Finally, there was evidence from which the jury could infer that Smith affirmatively used a false identity. The residence they occupied at the time she was arrested was leased in the name of Joseph Walker, and the monthly rental payments of \$2750 per month were personally delivered by Smith to the lessor in cash, from which a jury could infer that Smith knew it

was necessary to avoid paying by check, which could have disclosed the use of false identities by Smith and Rodriguez.

We conclude that, because there was sufficient evidence from which a jury could have found true the preliminary facts concerning Smith's awareness of the documents and her understanding of their significance, the trial court's decision to admit the other misconduct evidence pursuant to section 1101, subdivision (b), was not an abuse of discretion.

Section 352

Smith asserts that, even assuming the "other misconduct" evidence was admissible, it should have been excluded because its probative value was outweighed by its prejudicial impact. When evidence is admissible under section 1101, subdivision (b), it is still subject to potential exclusion under section 352 if its probative value was substantially outweighed by its prejudicial impact, the undue consumption of time, or the potential for confusion. (*People v. Leon* (2008) 161 Cal.App.4th 149, 168.) Evidentiary rulings under section 352 will not be disturbed unless we are convinced the court exercised its discretion in an arbitrary, capricious or patently absurd manner. (*People v. Ledesma* (2006) 39 Cal.4th 641, 705.)

We conclude the trial court's evidentiary rulings were not an abuse of its discretion. The court took great care in examining and considering the admissibility of each proffered item. Both parties filed written in limine motions prior to trial and, after hearing argument on those motions, the court concluded it would reserve ruling because it needed to hear the evidence in context, and indicated it would hold foundational

hearings before permitting the evidence to be introduced. The following day, the court held an extensive section 402 hearing to consider many of the items proffered by the prosecutor, at which hearing it heard the testimony of Bullard and considered the arguments of counsel. The court observed "some are clearly relevant, some I don't think are [relevant] at all," and "[t]here's no way [to] rule on them in a vacuum, not having heard more evidence," and instructed the prosecutor to pare down the materials because any effort to admit all the exhibits would unduly prolong the trial.

As trial progressed, the court held numerous subsequent section 402 hearings to determine whether a sufficient foundation existed to permit various witness to testify concerning "other misconduct," and considered the arguments of counsel, before ruling on the admissibility of the testimony for each of those witnesses. Additionally, after the prosecution pared down the proposed exhibits list, the court permitted the parties to file supplemental written authorities on the admissibility of the materials, and considered extensive oral argument addressing both admissibility under section 1101, subdivision (b), and exclusion under section 352, after which the court concluded that it would not allow any document to be introduced "simply because it was found [in Smith's house] pursuant to a search warrant." Instead, because the court was focused on "what knowledge she may have had concerning [each proffered document] and how it ties into the counts," the court concluded it would be required to conduct another foundational hearing to determine how "each item . . . ties into the case." The court then conducted another extensive foundational hearing at which Bullard was questioned by the prosecution about the proffered documents, was cross-examined by the defense, and was

questioned by the court. After hearing the testimony and examining the documents, the court concluded some of the proffered evidence "clearly can be tied in or purportedly [be tied to Smith]" while "others clearly can't be tied to [Smith]," and ruled only the documents with some "nexus or connection" would be allowed.

The record is clear that the court carefully considered the purported relevance of and foundation for each document, as well as for the testimonial evidence concerning other misconduct, considering both section 1101 and section 352. We are convinced the court did not act in an arbitrary, capricious or patently absurd manner when admitting the evidence, and therefore Smith's claim of error under section 352 is not persuasive.

III

THE SUBSTANTIAL EVIDENCE CLAIM

Smith alternatively claims the evidence was insufficient to support the guilty verdicts on any of the counts.

A. Legal Principles

When a defendant challenges the sufficiency of the evidence to support a conviction, our review is limited to reviewing the entire record to determine whether substantial evidence supports the verdict. Substantial evidence is defined as evidence that is reasonable, credible, and of solid value. (*People v. Elliot* (2005) 37 Cal.4th 453, 466.) "The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury's duty to acquit a defendant if it finds the circumstantial evidence

susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court[,], that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] ' "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]" ' " (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.) In applying this standard, we must affirm the judgment unless under no hypothesis whatever is there sufficient substantial evidence to support it. (*People v. Nishi* (2012) 207 Cal.App.4th 954, 966.) Because it is "the exclusive function of the trier of fact to assess the credibility of witnesses and draw reasonable inferences from the evidence" (*People v. Sanchez* (2003) 113 Cal.App.4th 325, 330), we may not merely retry the case on appeal and, accordingly, the defendant "bears an enormous burden" when challenging the sufficiency of the evidence. (*Ibid.*)

The same standards are applicable when the issue was the defendant's subjective intent at the time he or she acted, and the prosecution has relied on circumstantial evidence from which the jury could infer the requisite intent. (Cf. *People v. Avila* (2009) 46 Cal.4th 680, 701.) Intent is rarely subject to direct proof, and must usually be inferred from all of the surrounding facts and circumstances. (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574.)

B. Analysis

We conclude substantial evidence supports the verdicts.¹⁷ A rational trier of fact could have inferred, from all of the surrounding facts and circumstances, Smith knew of Rodriguez's scheme to employ false identities and forged grant deeds to acquire properties to rent to others and, with that knowledge, aided Rodriguez when she took the funds charged in counts 1 through 5 and attempted to take the funds charged in count 6. The presence in plain sight of the numerous forged documents throughout the house (along with sheets of paper apparently used to practice forging signatures) permitted the jury to infer Rodriguez had no concerns Smith might raise questions because Rodriguez knew Smith was already aware of their significance. Similarly, the use of her e-mail to send forged documents or to receive rental inquiries would permit the jury to infer that the *reason* Rodriguez had no concerns Smith might raise questions if contacted by

¹⁷ We have significant doubt whether Smith has preserved this challenge because, as the People note, Smith has not set forth in her opening brief "*all* of the material evidence on the disputed elements of the crime in the light most favorable to the People" (*People v. Sanghera*, *supra*, 139 Cal.App.4th at p. 1574), which would permit us to deem the argument forfeited. (*People v. Battle* (2011) 198 Cal.App.4th 50, 62.) By way of example only, Smith attempts to discount the fact her name was typewritten onto the documents used in the forgery as the broker or agent because "Bullard admitted . . . she had information about who typed that information into the documents and it was not [Smith]." However, Smith's opening brief does not set forth all the relevant facts, i.e. Bullard's "admission" was that Rodriguez *claimed* to have put Smith's name on all the documents, and the second half of Bullard's answer was, "Are you asking if I believed him?" The record, as a whole, would permit a jury to infer Rodriguez was attempting to protect Smith by claiming she was uninvolved and that Bullard did not credit his claim. Although it appears Smith's failure to set forth *all* the material evidence, in the light *most favorable* to the judgment, would permit us to dismiss Smith's argument without further comment as forfeited, we nevertheless reach the issue.

prospective tenants (and in fact there was no suggestion Smith raised any questions) was that Smith *already knew* the answers to those questions.

Moreover, the fact Smith's cell phone number was on numerous documents involving properties acquired through forged deeds would permit the jury to infer that the reason Rodriguez had no concerns Smith might answer her phone and mistakenly reveal the scam was because he knew she was ready to play her role. Indeed, a jury could infer Smith was aware of and ready to play her role in the scam from the evidence concerning the February 2009 replacement check episode with Rock. Rodriguez (then masquerading as Tim Smith) told Rock of the need to rewrite his February rent check to be payable to his wife, and then met Rock at the bank accompanied by Smith, whom Rodriguez falsely introduced as his wife. The fact Rodriguez was unconcerned that Rock might refer to him as Tim Smith in front of Smith would support an inference that Rodriguez was confident Smith was ready to play her role (as Tim Smith's wife) because she was part of the masquerade.¹⁸

There was also substantial evidence from which the jury could have inferred Smith knew the car she was driving was a stolen vehicle. She had been driving the car for a

¹⁸ A similar inference could have been drawn from the fact that, although the house leased by Smith and Rodriguez was in the name of another false identity (Joseph Walker), Smith personally delivered the monthly rental payments to the lessor's agent, from which a jury could have inferred Smith was ready to answer to her false identity (Jaden Walker) if the agent to whom she delivered the cash happened to refer to her by this false name. Moreover, the fact she always paid such a large sum (\$2750 per month) in cash, rather than writing and sending a check, would support an inference that Smith knew it was necessary to avoid paying by a check to preserve the facade of the false identities being used by Smith and Rodriguez.

year, but the license plates had been removed and placed in the glove compartment; a jury could have inferred that, at some point during her use of the car, she would have used the glove box and discovered the plates. Additionally, she admitted knowing that a legitimately owned car needed to be registered in their names but sought to excuse the inactivity by claiming they lacked the \$2000 necessary to accomplish that registration. A jury could have inferred, from the fact this claim was inconsistent with the bank records showing ample funds *were* available (see fn. 12, *ante*), she knew the true reason the reregistration was not accomplished. Finally, Smith knew Rodriguez used misappropriated identities to illicitly obtain vehicles (because she was told so by Munoz), and a jury could have inferred Smith drove the Armada without license plates for a year because she knew Rodriguez acquired the Armada using a similar *modus operandi*.

We conclude there was sufficient evidence to support the jury's inference that Smith was not a dupe, but instead knew of and assisted in Rodriguez's schemes concerning the Horton properties and the Armada.

DISPOSITION

The judgment is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.